



Oklahoma Office of Workforce Development
900 N. Portland Ave.
Oklahoma City, OK 73107

OKLAHOMA WORKFORCE DEVELOPMENT ISSUANCE #09-2019

TO: Workforce Development Board Chairs
Workforce Development Board Staff
Workforce Development Fiscal Agents

FROM: Don Morris, Executive Director

DATE: October XX, 2019

SUBJECT: Guidance on Incumbent Worker Training services provided under the Workforce Innovation and Opportunity Act (WIOA).

PURPOSE: The purpose of this policy is to provide guidance to local workforce development boards (LWDBs) regarding participant eligibility for Incumbent Worker Training (IWT) and employer eligibility for IWT reimbursement.

REFERENCES:

- WIOA 134(d)(4)
- WIOA 133(b)
- WIOA 181(d)(2)
- WIOA 194(13)
- 20 CFR §§ 680.320, 680.530, and 680.780 – 840
- 20 CFR § 683.200
- 2 CFR § 200
- TEGL 10-16, Change 1
- TEGL 19-16
- 29 CFR § 38.25

MESSAGE: Incumbent worker training (IWT) is designed to meet the special requirements of an employer, or a group of employers within the same industry, to retain a skilled workforce or avert the need to lay off employees. Incumbent workers benefit by acquiring the skills necessary to retain employment and/or advancement within the company, or acquire the skills necessary to avert a layoff. IWT must be conducted with a commitment by the employer to retain or avert the layoff of the incumbent worker or workers participating in the training.

RESCISSIONS NONE	EXPIRATION DATE Continuing
----------------------------	--------------------------------------



OOWD is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities.

Incumbent Worker Eligibility

To qualify as an incumbent worker, an individual must:

- 1) Be employed,
- 2) Meet the Fair Labor Standards Act requirements for an employer-employee relationship (29 USC Chapter 8), and
- 3) Have an established employment history with the employer for six (6) months or more.

In the event that IWT is being provided to a cohort of employees, not every employee in the cohort must have an established employment history with the employer for 6 months or more, as long as a majority (51% or more) meet the requirement. It must be noted however, that IWT may not be used to provide the occupational training a new hire needs.

Individuals receiving incumbent worker services are not subject to the eligibility criteria that apply to participants in the Adult or Dislocated Worker (DLW) programs, unless they are receiving other services under those programs. Therefore, individuals who only receive IWT and no other WIOA title I career or training service(s) are not included in WIOA performance indicator calculations for the core programs.

Performance indicator reporting requirements for IWT only individuals are addressed on pages 6 - 7 of this issuance.

Development of Local Incumbent Worker Training Strategies

Local workforce development areas are required to establish policies and definitions to determine which workers, or groups of workers, are eligible for incumbent worker services. IWT policies must be consistent with the State and Local Plan, as well as with career pathway and sector strategy approaches for in-demand occupations.

IWT is generally provided to private sector employees. The local IWT policy should address instances where non-profit and local government entities may be the recipients of IWT funds. For example, IWT may be used in the health care industry where hospitals are operated by non-profit or local government entities and an upskilling opportunity for nurses is available.

IWT may be utilized for underemployed incumbent workers that would prefer full-time employment but are working part-time within a company for economic reasons. These employees may have accepted part-time employment to gain or maintain employment with the company. Or, a previous dislocation has led them to accept reduced employment and often lower wages. This strategy focuses on increasing skills for underemployed frontline workers in an effort to advance the workers to more skilled positions with the same employer or industry sector, thus leading to an increase in earnings through more work hours and an increase in pay.

As part of an incumbent worker upskilling strategy, local boards are encouraged to develop an upskilling/backfill strategy that involves filling jobs with other WIOA participants when the positions have been vacated by workers who are moving into more advanced positions in the company.

Funding Incumbent Worker Training

Local workforce development boards (LWDBs) may use up to 20 percent of their combined total of Adult and DLW allocations to pay for the Federal share of IWT. Adult and DLW funding for IWT may only be

used for activities that are programmatic in nature. Related administrative activities must be paid out of the LWDB's administrative funds.

Employers participating in the program are required to pay the non-Federal share of the cost of training. The non-Federal share may not be less than:

- 10 percent of the cost, for employers with not more than 50 employees;
- 25 percent of the cost, for employers with more than 50 employees but not more than 100 employees; and
- 50 percent of the cost, for employers with more than 100 employees.

The non-Federal share provided by a participating IWT employer may include the amount of the wages paid by the employer to a worker while in incumbent worker training. The employer may provide the share in cash or with fairly evaluated in-kind contributions. The employer and the local board must track and document employer cost share contributions. An accurate accounting of the non-Federal share must be kept, including how the value of any in-kind contributions have been determined. In-kind contributions will only count toward satisfying the cost-sharing requirement if the cost would be allowable if the employer was paying the cost instead of receiving the third party contribution. Allowable costs are determined by the tests of reasonableness, necessity, and allocability defined in 2 CFR 200.402-405 – Basic Considerations.

Statewide Incumbent Worker Training Activities

The State may use statewide activities funds and Rapid Response (OWDI #14-2017) funds for statewide incumbent worker training activities, as per 20 CFR §§ 682.210(b) and 682.320(b)(4). The State or the Governor's Council may make recommendations to the LWDBs for providing IWT that has a statewide impact. The LWDBs are encouraged to cultivate opportunities for employers to develop a more competitive workforce or avert potential layoffs, and to provide incumbent workers with opportunities for advancement and wage gains within their company.

Funding Priorities

Preference is to be given to any of the following:

- Smaller businesses with less than 50 employees;
- Businesses located in an Opportunity Zone as defined by Oklahoma Statutes Title 68, Section 3603 Definitions;
- Businesses located in a rural county (i.e., not a part of a metropolitan area);
- Training for occupations on the Critical Occupations list as presented on oklahomaworks.gov;
- Training provided to increase employee skills as a layoff avoidance strategy; or
- Training that leads to a significant upgrade in employee skills.

Employer Eligibility Criteria

The LWDB must take the following into consideration when determining the eligibility of an employer to receive IWT funding:

- The characteristics of the individuals in the program, including the extent to which these individuals represent populations with barriers to employment, as defined in WIOA 3(24);

- The relationship of the training to the competitiveness of the individual. For example, extra consideration might be given to employers who propose to increase the competitiveness of individuals with barriers to employment, such as how these individuals would benefit from a skills gain that results in retention or advancement;
- The relationship of the training to the competitiveness of the individual and the employer;
- The occupation for which the incumbent worker is training must be an in-demand industry as defined by WIOA 3(23) or as determined by the LWDB or planning region; and
- Other factors the LWDB determines to be appropriate, which may include:
 - the number of employees participating in the training;
 - the wage and benefit levels of the participating employees at the beginning of training and anticipated upon completion of training. The new wage rate after training is completed must be higher than the employee's prior wage rate;
 - the existence of other training and advancement opportunities provided by the employer;
 - the quality of the training, as evidenced by industry-recognized training experience and credentials;
 - layoffs averted as the result of the training; and
 - utilization of IWT as part of a larger sector and/or career pathway strategy.

IWT is designed to increase the competitiveness of the employer by developing a highly skilled workforce that will result in increased business financial viability, stability, competitiveness, and productivity. To avert the risk of closing, IWT may be developed with a business or business association to maintain their competitive status, incorporate new technology, or prevent downsizing. Process improvements that contribute to the competitiveness and productivity of a business are allowed as a component of IWT, when combined with training that results in new skill attainment for incumbent workers. However, training that is necessary for employers to meet federal "safe workplace" requirements, (e.g., OSHA, food handler certifications, etc.) is not considered IWT.

The competitiveness of workers participating in IWT may be increased by enhancing existing skills, learning new skills, and earning employer or industry-recognized credentials, in addition to retaining employment, maintaining their careers, and/or increasing their earnings potential. An ideal IWT project allows the opportunity for employers to promote incumbent workers with increased skill levels, which creates backfill opportunities for other WIOA participants, such as less skilled or underemployed employees within the company, or for WIOA participants seeking employment.

Procurement of Training

Contracts are the mechanism used to provide IWT. Contracts must be established through proper procurement procedures, as found in OWDI #10-2017. Although the employer generally selects and procures the training provider, LWDBs may help identify training providers, such as those on the Eligible Training Provider List (ETPL).

The IWT Contract must include:

- the process for documenting the incumbent worker's six month work history requirement with the employer;
- the amount of the employer's non-Federal share, based on the size of the employer's workforce;

- a statement regarding the expectation that once incumbent workers advance with the employer, the employer then provides an opportunity to the LWDB to fill the now vacant position with a local WIOA participant, whenever possible;
- the process for documenting how employer cost match contributions will be tracked and documented in the employer's, the LWDB's, and Service Provider's contract file;
- the methodologies for determining the value of in-kind contributions and how contributions are documented in the contract, all of which must conform to the cost match requirements at 2 CFR § 200.306;
- local monitoring requirements;
- other documentation required by the local area;
- assurances as required in the Regulatory and Prohibited Activities section of this issuance;
- commitment by the employer to share required performance data with LWDB
- nondiscrimination and Equal Employment Opportunity (EEO) assurances, including complaint processing and compliance reviews;
- start and end date of the contract; and
- contract limits, including length of contract and funding amounts.

Allowable and Unallowable Costs

Allowable costs may include only costs directly related to training. Allowable costs may include:

- Instructor/trainer salaries;
- Curriculum development, textbooks, manuals, training software, materials and non-consumables; and
- Other necessary and reasonable costs directly related to training.

Unallowable costs include, but are not limited to:

- Foreign travel;
- Purchase or lease of capital equipment;
- Encouragement or inducement of a business or part of a business to relocate from any location in the United States; and
- Use of IWT funds to pay for a worker's training wages.

Regulatory Limitations and Prohibited Activities

Businesses that fail to meet any of the following criteria are not eligible to receive funds for IWT:

- Businesses must not be presently debarred, suspended, proposed for disbarment, declared ineligible, or voluntarily excluded from participation in transactions by USDOL or the State of Oklahoma. Below are some websites that may be helpful in checking tax, environmental compliance, and debarment status.
 - Federal Exclusion and Debarment Site: <http://www.sam.gov>
 - Oklahoma Tax Commission: <https://www.ok.gov/tax/>
 - Oklahoma Employment Security Commission: www.ok.gov/oesc
 - Business Filing Search: <https://www.sos.ok.gov/>
 - Oklahoma Department of Environmental Quality: <http://www.deq.state.ok.us/OEA/index.html>

- Businesses shall not have any outstanding tax liability to the State of Oklahoma for over six months. LWDBs will require the businesses to disclose any known outstanding tax liabilities, including those with other states, prior to entering into the contract. The LWDB shall consider existing out-of-state violations when determining eligibility to receive IWT funds. The local WDB must document any resolution of outstanding tax liability, which may include letters from the business or from the State in which the tax liability occurred.
- Businesses must ensure that they have no more than one unfair labor practice contempt of court finding. <http://www.oklegal.onenet.net/ok.agency.decisions.basic.html>
- Oklahoma businesses must have all of the approvals, licenses, or other qualifications needed to conduct business in the state and all must be current. Should this status change during the course of the local IWT program activities, resulting in the business's disqualification from conducting business in Oklahoma, all training under the IWT program must cease.
- IWT funds may not be used, or proposed for use, to encourage or induce the relocation of a business or part of a business if the relocation would result in a loss of employment for any employee at the original location, when the original location is within the United States.
- Businesses that have relocated to Oklahoma and have laid-off workers at their former location in the United States may not be considered for this program until they have been in operation at the new location for 120 days.
- To verify that a business is not relocating employment from another area, a pre-award review must be undertaken and documented by the local WDB. The review must include the names under which the establishment conducts business, including predecessors and successors in interest; the name, title, and address of the company official certifying the information, and whether WIOA assistance is being sought in connection with past or impending job losses at other facilities of their company. The pre-award review should also include a review of whether appropriate notices have been filed, as required by the Worker Adjustment Retraining Notification (WARN) Act. The review may also include consultations with labor organizations and others in the affected local area(s).
- Businesses must not have any outstanding civil, criminal or administrative fines or penalties owed to or pending in the state of Oklahoma.
- Funds provided to employers for IWT must not be used to directly or indirectly assist, promote, or deter union organizing.
- Funds provided to employers may not be used to directly or indirectly aid in the filling of a job opening what is vacant because the former occupant is on strike, or is being locked out in the course of a labor dispute, or the filling of which is otherwise an issue in a labor dispute involving a work stoppage.
- All general fiscal and administrative rules listed at 20 CFR, Chapter V, Part 683, Subpart B – Administrative Rules, Cost, and Limitations apply.

Performance Indicator Reporting Requirements

Although individuals receiving IWT are not participants for the purpose of inclusion in WIOA performance indicator calculations, local areas are still required to report certain participant and performance data on all individuals who receive only IWT. The required elements for these incumbent worker individuals are limited to basic information (name, address, date of birth, social security number, etc.) and the elements needed to calculate IWT performance indicators for:

- Employment in the 2nd and 4th quarters after exit;
- Median earnings in the 2nd quarter after exit;

- Measurable Skills Gains; and
- Credential Attainment.

For the purposes of calculating the above metrics, the exit date for an individual who has received only IWT will be the last date of training, as indicated in the training contract.

The U.S. Department of Labor (DOL) encourages the collection of incumbent worker social security numbers (SSNs) as part of the training contract with the employer, the purpose of which is to ensure the availability of wage records for these individuals. If no SSN is available, the LWDB may utilize supplemental wage information, as per OWDI #07-2018, to verify the wages reported.

Incumbent workers receiving any WIOA service in addition to IWT must meet the eligibility and data validation requirements for which they are enrolled.

EQUAL OPPORTUNITY AND NONDISCRIMINATION STATEMENT: All Recipients, and Sub recipients/Sub grantees must comply with WIOA's Equal Opportunity and Nondiscrimination provisions which prohibit discrimination on the basis of race, color, religion, sex (including pregnancy, childbirth, and related medical conditions, transgender status, and gender identity), national origin (including limited English proficiency), age, disability, political affiliation or belief, or, for beneficiaries, applicants, and participants only, on the basis of citizenship status or participation in a WIOA Title-I financially assisted program or activity.

ATTACHMENTS:

- Attachment A Project Funding Proposal/Application
- Attachment B Grantee Worksheet
- Attachment C Employee List
- Attachment D Anticipated Outcomes
- Attachment E Project Rating Form

ACTION REQUIRED: This Oklahoma Workforce Development Issuance (OWDI) is to become a part of your permanent records and made available to appropriate staff and sub-recipients.

INQUIRIES: If you have any questions about this issuance, please contact Policy and Program Staff in the Oklahoma Office of Workforce Development. Contact information can be found at <http://www.oklahomaworks.gov/about/>.